

# United States District Court

WESTERN DISTRICT OF WASHINGTON

JAMES MOODY

JUDGMENT IN A CIVIL CASE

v.

SCOTT FRAKES

CASE NUMBER: C09-5204RJB/KLS

— **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

XX **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

The Report and Recommendation (Dkt. 16) is **ADOPTED**;

The petitioner's request to certify the comparability question to the Washington State Supreme Court is **DENIED**; and

The petitioner's motion for a Certificate of Appealability is **GRANTED** on the following issue:

Whether the petitioner was denied is Sixth Amendment right to ineffective assistance of trial and appellate counsel when both counsel failure to argue the lack of 'comparability' of the petitioner's two foreign convictions based on the differences in the available defenses?

The petitioner is invited, if he so wishes, to file a proper motion with the court by November 13, 2009, for the appointment of counsel .

November 6, 2009  
Date

BRUCE RIFKIN  
Clerk

s/CM Gonzalez  
Deputy Clerk